IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number 91-11600
JAMES ROY BURNETT	)	
	)	
Debtor	)	
	)	
	)	FILED
JAMES ROY BURNETT	)	at 5 O'clock & 17 min. p.m.
	)	Date: 2-3-92
Plaintiff	)	
	)	
vs.	)	Adversary Proceeding
	)	Number 91-1096
DANZ CARZ, INC.	)	
AND DANIEL R. LINDBOM	)	
	)	
Defendants	)	

ORDER

Trial of this adversary proceeding and hearing on the objection of James Roy Burnett, debtor, to the claim of defendant debtor's underlying Chapter 13 case were Lindbom filed in the consolidated and heard January 14, 1992. Based upon the evidence make the following findings of fact and presented at trial I conclusions of law and enter judgment for the plaintiff, James Roy Burnett.

FINDINGS OF FACT

Defendant Danz Carz, Inc. is a Georgia corporation engaged in the business of selling used cars on U.S. Highway 278, Harlem, Columbia County, Georgia. Defendant Daniel R. Lindbom is president of Danz Carz, Inc. On March 20, 1991 Danz Carz, Inc. sold debtor a 1984 Chevrolet Chevette automobile VIN lGlAJ08ClEY1377561. The transaction was evidence by a document 8 1/2 inches wide by 17 inches long divided into three sections, hereinafter the "transaction document." The first section of the transaction document is titled "INVOICE-BILL OF SALE." The second section is titled "NON-LEASED VEHICLES ODOMETER DISCLOSURE STATEMENT." The third section is titled "CONDITIONAL SALES CONTRACT (Installment Loan Disclosure Statement)." The form used was the typical form utilized by defendants in their business (defendants' exhibit No. 1). Both parties submitted copies of what each contends to be the final transaction document [plaintiff's exhibits No. 1 and No. 2 and defendants' exhibit No. 7 (attached to defendants' answer as exhibit "A")]. Both versions are photocopies and are identical in the following particulars relevant to this case:

The first section, "INVOICE-BILL OF SALE," provides that the purchase of the automobile was calculated as follows:

Cash Price	$1,595.00
Sales Tax	95.70
Document Fee (Incl regn.)	35.00
Total Down PaYment	-630.70
Unpaid balance	$1,095.00

The second section, "NON-LEASED VEHICLES ODOMETER DISCLOSURE STATEMENT" is not relevant to this dispute. The discrepancy between

the two versions of the transaction document is found in the third section, "CONDITIONAL SALES CONTRACT (Installment Loan Disclosure Statement)." The two versions of the conditional sales contract are identical in the following particulars: Both documents reflect that the sale is financed through "Dan Lindbom Box 616 Harlem, Georgia 30814." Both versions also reflect "annual percentage rate 18.75%; finance charge $164.--; amount financed $1,095.--; total of payments $1,259.--; total sales price (the total cost of purchase on credit) $1259.--." Both versions reflect that the buyer has a right to receive an itemization of the amount financed but that the itemization was not requested. The schedule of payments reflects that the buyer agreed to pay 18 consecutive biweekly installments of Sixty-Seven and No/100 ($67.00) Dollars beginning April 6, 1991 and due on the same day of each indicated period thereafter until paid in full. Both agreements contain the following printed terms:

> LOSS OR DESTRUCTION OF THE PROPERTY DESCRIBED FROM ANY CAUSE SHALL IN NO WAY AFFECT THE LIABILITY OF PURCHASER(S) TO PAY THE INDEBTEDNESS.
>
> SECURITY: Buyer has this day purchased and received the above described property, goods, service, or equipment and agrees to give HOLDER security title to and security interest until Total of Payments and any and all other

indebtedness, now or hereafter due or owing by Buyer to Holder however or whenever incurred is paid.

LIABILITY INSURANCE COVERAGE for bodily injury and property damage by others is not provided under this contract and is the responsibility of the Buyer.

PREPAYMENT: If the above Conditional Sales contract is paid in full by cash, a new loan, refinancing or otherwise before the final installment, the borrower shall receive a rebate of precomputed interest computed under the Rule of 78's, after a deduction of the amount of $50.00 as a minimum charge.

LATE AND DEFAULT CHARGE: In the event of any late payment, a charge will be assessed in the amount of $10.00 or 10% of the amount of the late installment, whichever is less. If any portion of this indebtedness is collected through an attorney, all costs of collection including 20% attorney's fee will be charged to the borrower.

I hereby agree that any statement by a sales manor agent of said company, unless expressed in this agreement, shall not be binding upon said company. It is understood that the company does not guarantee the correctness of the speedometer reading, gas mileage or model of said car, and I do accept said car in its present mechanical condition.

It is agreed that the title of ownership of said car above described does not pass to me until the final cash payment is made.

As a part of the consideration of said car which I am purchasing from said company, I certify and represent that the car I am trading in, is free from all encumbrances whatsoever, and that I am the legal owner of the same and have the legal right to sell the same, and that I am twenty-one years of age.

It is understood that the above sale is made

> subject to approval by an officer of said company and subject to my credit as a purchaser, being approved by the company through whom the said is to be financed.

Both versions reflect a notary entry and execution by Dan Lindbom as dealer and James R. Burnett as purchaser.

Defendants' exhibit No. 7 differs from plaintiff's exhibit No. 2 in that defendants' exhibit No. 7 also contains a description of the collateral, the automobile. The vehicle description was added to the conditional sale contract retained by the defendants after the transaction was completed and a copy of the transaction document was delivered to the debtor.

Subsequent to the purchase of the automobile, the debtor experienced mechanical problems. Debtor returned with the automobile to Danz Carz, Inc. and was advised by Mr. Lindbom to deliver the vehicle to James Freeman Auto Electric in Thomson, Georgia for repairs. Mr. Freeman performed the repairs at a charge of Seven Hundred Seventeen and No/100 ($717.00) Dollars. Debtor contends that the repairs were covered under warranty. Defendants contend there was no warranty and that the vehicle was purchased as is. Debtor's agreement under the terms of the conditional sales contract to "accept said car in its present mechanical condition" (defendants' exhibit 7 and plaintiff's exhibit 2), the "warranty disclaimer-sold as is" signed by the debtor (defendants' exhibit

No. 2), and the "Buyer's Guide" indicating the automobile was sold "as is no warranty" also signed the debtor (defendants' exhibit No. 3), establish that the vehicle was sold without a warranty. Debtor again experienced mechanical problems with the automobile and returned the vehicle to Mr. Freeman for additional repair.

The debtor did not comply with the payment terms of the conditional sales contract. Under the contract, the debtor agreed to pay Sixty-Seven and No/100 ($67.00) Dollars in consecutive biweekly payments beginning April 6, 1991. According to the contract, in the time relevant to this adversary proceeding and objection to claim, the debtor was required to make payments on April 6, April 20, May 4, May 18, June 1, June 15, June 29, July 13, July 27 and August 10. According to the payment card maintained by defendants in their ordinary course of business (plaintiff's exhibit No. 6), payments were due April 6, April 20, May 6, May 20, June 6, June 20, July 6, and July 20, August 6, and August 20. It appears that the parties modified the payment terms from a biweekly payment to a payment due twice a month. According to the payment card, the debtor made payments of One Hundred Thirty-Four and No/100 ($134.00) Dollars on April 18, May 30, June 27 and August 1, resulting in a gross balance of Seven Hundred Twenty-Three and No/100 ($723.00) Dollars due under the contract

after the payment noted August 1.

The parties further modified the payment term to monthly. In addition to the One Hundred Thirty-Four and No/100 ($134.00) Dollars payment on August 1, the debtor paid defendants Twenty and No/100 ($20.00) Dollars toward the outstanding garage bill due James Freeman for the initial repairs (plaintiff's exhibit No. 5).

The defendants contend that they repossessed debtor's automobile from Mr. Freeman's garage on or about August 16, 1991. In support of this contention, defendants offered the testimony of Mr. Roy Axon, a former employee of Danz Carz, Inc., who testified that he performed the repossession between August 15 - 20, 1991. Additionally, defendants offered the testimony of Mr. James Ousley, who is vice president of sale of Danz Carz, Inc. and as described by Mr. Lindbom an investor in the corporate defendant, who testified that although he was not sure of the exact date of the repossession, the automobile was at the Danz Carz, Inc. sales lot on August 30, 1991. Mr. Lindbom also testified that the automobile was repossessed by Mr. Axon from Mr. Freeman's garage on August 16, 1991 and in support of his testimony offered into evidence a statement executed by Mr. Freeman stating that "[t]he vehicle was then picked up from my repair shop by Danz Carz, Inc. on 16 August, 1991 at which time Mr. Lindbom indicated it was being repossessed and he would continue to make good on the repair bills incurred" (defendants' exhibit No. 6 and plaintiff's exhibit

No. 4) and a notice of repossession dated August 18, 1991 which Mr. Lindbom testified was prepared by him on the date indicated and mailed by regular mail to the debtor (defendants' exhibit No. 5).

Debtor disputes that the repossession took place on August 16, 1991. Debtor testified that he did not deliver the automobile to Mr. Freeman's garage for the second repair until September 1991. Mr. Freeman testified that his statement (defendants' exhibit No. 6 and plaintiff's exhibit No. 4), bearing his signature, was executed in blank and delivered to Mr. Lindbom. Mr. Freeman could not recall
the precise date of repossession but he was unequivocal in stating that the repossession took place after Mr. Lindbom notified him by telephone that the debtor had filed for bankruptcy protection. The record in the underlying Chapter 13 case reveals that this Chapter 13 case was filed on August 30, 1991.

Having observed the demeanor and heard the testimony of the witnesses, I find the testimony of Mr. Freeman to be credible and believable. Additionally, Mr. Freeman appears to be the only witness without an interest in the outcome of this litigation. Mr. Axon conducted the repossession. Mr. Ousley is an investor in defendant Danz Carz, Inc. Mr. Lindbom is a defendant in this action. Other aspects of this case cast doubt upon the credibility of Mr. Lindbom and defendants' other witnesses. Regarding the transaction document, Mr. Lindbom testified that defendants'

exhibit No. 7, defendants' version of the transaction document, was complete when the form was delivered to the debtor on the date of sale, March 20, 1991. Yet, defendants are unable to produce their file copy of defendants' exhibit No. 7 and debtor was version, plaintiff's exhibit 2, does not contain the description of the collateral. The conclusion is irrefutable: the description of the collateral in the conditional sales contract was added after the transaction was completed and a copy of the document was delivered to the debtor. Mr. Lindbom admitted that the written statement of James Freeman (plaintiff's exhibit 4 and defendants' exhibit 6) was prepared after

Mr. Freeman executed a blank sheet of paper. From the testimony of Mr. Freeman, the automobile could not have been repossessed on August 16, 1991. Defendant's exhibit No. 5, the notice of repossession, which defendants contend supports their position that the repossession occurred on August 16, 1991, is an original document. According to Mr. Lindbom, a photocopy was sent to the debtor. The debtor contends he never received the document and I find that testimony credible. The document on its face calls for a certified mail number. Mr. Lindbom testified that the document was mailed on August 18, 1991 by regular mail. This in spite of the fact that Mr. Lindbom testified that he was knowledgeable of the proper procedure for repossession and sale of the motor vehicle

under applicable Georgia law, which requires notice of repossession by certified mail, return receipt requested. Official Code of Georgia Annotated (O.C.G.A.) §10-1-36.[1] Additionally, the notice

of repossession indicates copies sent to S. Shepherd, attorney and J. Lindbom, VP ADM. No evidence was introduced by defendants' counsel, Mr. Shephard or "J. Lindbom VP ADM" that they ever received copy of the notice of repossession. Mr. Lindbom testified that the reason the motor vehicle was repossessed was that the debtor was in arrears on payments due under his conditional sales contract and that he failed and refused to make arrangements for the payment of Mr. Freeman's repair bill assumed by defendants. Plaintiff's exhibit No. 5, a receipt from Danz Carz, Inc. dated August 1, 1991, reflects a payment of One Hundred Thirty-Four and No/100 ($134.00) Dollars on the conditional sales contract and a

---

[1]0.C.G.A. §10-1-36 provides in pertinent part:

> When any motor vehicle has been repossessed after default in accordance with Part 5 of Article 9 of Title 11, the seller or holder shall not be entitled to recover a deficiency against the buyer unless within ten days after the repossession he forwards by registered or certified mail to the address of the buyer shown on the contract or later designated by the buyer a notice of the seller's or holder's intention to pursue a deficiency claim against the buyer. The notice shall also advise the buyer of his rights of redemption, as well as his right to demand a public sale of the repossessed motor vehicle.

Twenty and No/100 ($20.00) Dollar payment "on garage bill" which represents the repair hill due Mr. Freeman. Evidently, arrangements had been made for the payment of this bill by the debtor. Additionally, according to the payment schedule as outlined on the payment card (plaintiff's exhibit No. 6), as of the date of repossession alleged by the defendants, August 16, 1991, the debtor was current on the modified payment terms of One Hundred Thirty-Four and No/100 ($134.00) Dollars monthly. On April 18, 1991 debtor paid One Hundred Thirty-Four and No/100 ($134.00) Dollars which, according to the payment card, represented payments due April 6 and April 20, 1991. On May 30, 1991 the debtor made a payment of One Hundred Thirty-Four and No/100 ($134.00) Dollars, representing the payment due according to the payment card on May 6 and May 20. On June 27, 1991 debtor paid

One Hundred Thirty-Four and No/100 ($134.00) Dollars representing payments due according to the payment card on June 6 and June 20, 1991. On August 1, 1991 the debtor paid One Hundred Thirty-Four and No/100 ($134.00) Dollars representing payments due according to the payment card for July 6 and July 20. According to the payment history on the payment card, the debtor was not yet due for the August 6 and August 20, 1991 payment of One Hundred Thirty-Four and No/100 ($134.00) Dollars. As of August 16, 1991, the date defendants contend the repossession occurred, the debtor was current under the payment schedule established by the payment

card and was making payments toward the outstanding garage bill in the initial sum of Seven Hundred Seventeen and No/100 ($717.00) Dollars. All of the circumstances of this case taken as a whole, I find that defendant Danz Carz, Inc. by and through its agent and employee Roy Axon acting on behalf of defendant, Daniel Lindbom, holder of the purported conditional sales contract, took possession of the debtor's 1984 Chevrolet Chevette automobile from the premises of James Freeman for the purpose of repossessing and foreclosing upon property of the debtor after debtor filed his Chapter 13 petition on August 30, 1991.

The debtor contends that the conditional sales contract with the defendant Daniel Lindbom violates the provisions of the Truth-in-Lending Act, 15 U.S.C. §1601 et. seq. and "Regulation Z," 12 CFR §226.18(h) and (j) by failing to accurately disclose the

"total sales price, finance charge and annual percentage rate." Accordingly, debtor seeks judgment equal to twice the amount of the finance charge totaling Two Hundred Twenty-Two and No/100 ($222.00) Dollars as well as reasonable attorney's fees. The debtor also seeks recovery from defendants for the wrongful repossession of his automobile under applicable state law contending that the conditional sales contract fails to create a valid security interest in the automobile. Therefore, debtor contends, the repossession constitutes a tort of conversion,

giving rise to damages. Additionally, the debtor seeks recovery of damages against defendants pursuant to 11 U.S.C. §362(h), including punitive damages based upon the willful violation of the automatic stay of 11 U.S.C. §362(a) by the defendants in repossessing the automobile post petition with full knowledge of the bankruptcy filing.

Regarding the alleged truth-in-lending violation, the defendants in their answer admit the violation and concede the damage award of Two Hundred Twenty-Two and No/100 ($222.00) Dollars and recovery of reasonable attorney's fees to be determined by the court.

As to the State law claim, only a secured party has the right to conduct self-help repossession upon default by the debtor. O.C.G.A. §11-9-503. Debtor contends defendants did not have a valid security interest in his automobile at the time of the repossession. The creditor bears the burden of proof as to the existence of a

security interest. Amoco Oil Co. v. G. Sims & Associates, 291 S.E.2d 128, 130 (Ga. App. 1982). "Security interest" means an interest in a vehicle reserved or created by agreement which secures the payment or performance of an obligation, such as a conditional sales contract. chattel mortgage, bill of sale to secure debt, deed of trust, and the like." O.C.G.A. §40-3-2(13). In order to establish an enforceable security interest, unless the creditor possesses the collateral, the creditor must show that

"the debtor has signed a security agreement which contains a description of the collateral." O.C.G.A. §11-9-203(1)(a). In this case the instrument defendants contend contains a security agreement, the "Conditional Sales Contract," does not contain a description of any collateral securing the obligation. The contract merely provides that the buyer, plaintiff, "agrees to give HOLDER security title to and security interest" without identifying the collateral. Although the contract seems to give notice of a security agreement, it does not constitute one. Compare Grier v. Skinner's Furniture Store, 349 S.E.2d 826 (Ga. App. 1986). "A security agreement 'sets forth the agreement between the debtor and creditor and must contain a description sufficient to identify the property which they have agreed shall be the collateral for the debt."' Kubota Tractor Corp. v. Citizens & So. Nat. Bank, 403 S.E.2d 218, 222 (Ga. App. 1991) [quoting Villa v. Alvarado State Bank, 611 S.W.2d 483, 486 (Tex. Civ. App. 1981)]. Defendant Lindbom's adding a description of

plaintiff's automobile on the face of his copy of the contract after the debtor signed the agreement is insufficient to comply with the description requirement of O.C.G.A. §11-9-203(1)(a).

Moreover, the ambiguity of the transaction document as a whole does not support a determination that a valid security agreement existed. A security agreement is unenforceable if "it is

so ambiguous that its meaning cannot be reasonably construed from the language of the agreement itself." Kubota, supra, at 224 [quoting James Talcott, Inc. v. Franklin Nat. Bank, 194 N.W.2d 775, 782 (S.C. Minn. 1972)]. Under the "INVOICE-BILL OF SALE" the seller of the automobile is Danz Carz, Inc. However, under the "CONDITIONAL SALES CONTRACT," defendant Lindbom is the financier of plaintiff's purchase. It is unclear what entity is the "holder" of the "security interest" referred to in the conditional sales contract. Additionally the conditional sales contract itself contains inconsistent provisions concerning the grant of a "security interest." The contract states that the buyer "agrees to give HOLDER security title to and a security interest until total of payments and any and all other indebtedness, now or hereafter due or owing by Buyer to Holder however or whenever incurred is paid." Below that provision, the contract further provides, "It is agreed that the title of ownership of said car above described does not pass to me [buyer] until the final cash payment is made." These inconsistencies render the transaction document as a whole, and

individually as to each severable instrument contained therein, ambiguous. It cannot reasonably be construed either from the transaction document as a whole, or from any one of the three severable agreements contained in the transaction document, to

whom a security interest was granted or to what property a security interest attached. I find defendants failed to meet their burden to prove the existence of a valid security interest. "Any attempt to enforce a non-existent 'security interest' against a third party is impermissible." ITT Financial Services v. Gibson, 372 S.E.2d 468, 469-70 (Ga. App. 1988). However, even were a valid security interest established, plaintiff was not in default as the evidence shows that he was current on his obligations under the modified payment schedule as of the date on which defendants allege the car was repossessed. Defendants' seizure of the debtor's car was unlawful even if a security interest existed. O.C.G.A. °11-9-503. Accordingly, defendants are liable in tort under Georgia law for conversion of debtor's property. Ford Motor Credit Co. v. Milline, 224 S.E. 2d 437 (Ga. App. 1976); Trust Co. of Columbus v. Associates Grocers, 263, S.E.2d 676 (Ga. App. 1979); Lincoln Discount Corp. of Georgia v. Gibbs, 89 S.E.2d 821 (Ga. App. 1955). See also O.C.G.A. §51-10-1.

Regarding the alleged stay violation, the filing of a bankruptcy petition triggers the automatic stay of 11 U.S.C. §362(a), which operates as a stay against any act to obtain

possession of property of the estate or property from the estate or to exercise control over property of the estate, and any act to create, perfect or enforce against property of the debtor any lien

to the extent it secures a claim that arose before the commencement of the case. 11 U.S.C. §362(a)(3) and (5). Bankruptcy Code §362(h) provides that "[a]n individual injured by any willful violation of [the] stay . . . shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." "Willful" as used in °362(h) does not require a showing of a conscious intent to harm. What is required is a showing that the party knew of the filing of the bankruptcy petition and with that knowledge, acted intentionally or deliberately. In re: Atlantic Business and Community Corp., 901 F.2d. 325, 329 (3rd Cir. 1990); In re: Blume, 875 F.2d 224, 227 (9th Cir. 1989); Aponte v. Aungst (In re: Aponte), 82 B.R. 738, 742 (Bankr. E.D. Pa. 1988); In re: Bragg, 56 B.R. 46 (Bankr. M.D. Ala. 1985); Taylor v. U.S. (In re: Taylor), Ch. 13 case No. 89-11583 Adv. No. 90-1036 (Bankr. S.D. Ga. Dalis, J., March 25, 1991), aff'd, CV191-093 (S.D. Ga. Aug. Div. Bowen, J. Sept. 5, 1991); Randall v. Doctors and Merchants Credit Bureau (In re: Randall), Ch. 7 case No. 89-10847 Adv. No. 89-1035 (Bankr. S.D. Ga. Dalis, J. Jan. 21, 1990); Williams v. H & H Service Store (In re: Williams), Chapter 7 case No. 89-20499 Adv. No. 89-2021 (Bankr. S.D. Ga. Davis, J., Feb. 7, 1990). In this case, Mr. Lindbom, individually and in his capacity a

president of Danz Carz, Inc., knew of the filing of the debtor'

Chapter 13 bankruptcy proceeding, knew of the imposition of the automatic stay of §362(a), and with that knowledge directed an employee and agent of Danz Carz, Inc. to repossess the automobile, property of the debtor. Without question, willfulness as contemplated under §362(h) is established.

Section 362(h) mandates an award of actual damages, including attorney's fees, for a willful violation of the stay. Also, defendants' conversion of debtor's automobile entitles debtor to damages under Georgia law. Ford Motor Credit Co. v. Milline, 224 S.E.2d 437 (Ga. App. 1976); Deavers v. Standridge, 242 S.E.2d 331 (Ga. App. 1978). Debtor's actual damages include the rental expense incurred while the debtor was without possession of the automobile in the amount of Two Hundred Fifty and No/100 ($250.00) Dollars. In appropriate cases, damages for emotional distress are recoverable for violations of §362(h). See, e.g., Mercer v. DEF 48 B.R. 562 (Bankr. Minn. 1985); In re: Carrigan, 109 B.R. 163 (Bankr. W.D. N.C. 1989); Wyatt v. Mellon Mortgage, Inc.-East, 36 B.R. 783 (Bankr. S.D. Ohio 1984). Likewise, debtor is entitled under state law for actual damages for emotional distress resulting from defendants' illegal seizure of his automobile. See Emmons v. Burket, 348 S.E.2d 323, 326 (Ga. App. 1986), rev'd on other grounds, 256 Ga. 855, 353 S.E.2d 908 (1987). Additionally, a debtor seeking the protection of the bankruptcy court expects and is entitled to the protection

afforded by §362(a) of the Bankruptcy Code. The willful breach of that protection by a creditor gives rise to damages. See Pettitt v. Baker, 876 F.2d 456 (5th Cir. 1989). As to the state law cause of action in tort, damages for the illegal seizure in the amount of Five Hundred and No/100 ($500.00) Dollars are awarded. Likewise, in addition to the out-of-pocket expense of Two Hundred Fifty and No/100 ($250.00) Dollars incurred by the debtor, defendants' willful violation of the automatic stay of §362(a) warrants an award of Five Hundred and No/100 ($500.00) Dollars in damages.

Section 362(h) authorizes punitive damages for willful stay violations in "appropriate circumstances." 11 U.S.C. §362(h). In order to recover punitive damages, the defendant must have acted with actual knowledge that he was violating a federally protected right or with reckless disregard of whether he was doing so." In re: Wagner, 74 B.R. 901, 903-04 (Bankr. E.D. Pa. 1987); see also In re: Lile, 103 B.R. 830, 841 (Bankr. S.D. Tex. 1989). "The purpose of punitive damages is to both punish and deter the offending party. It should be gauged by the gravity of the offense and set at a level sufficient to insure that it will both punish and deter the party." Mercer, supra, at 565 (citations omitted). Defendants' egregious behavior in this case justifies an award of punitive damages to the debtor. Defendants, with full knowledge of debtor's Chapter 13 petition, willfully violated the stay of °362(a) and concocted documentation to conceal their culpability.

Specifically, the

written statement by Mr. Freeman (plaintiff's exhibit No. 4 and defendants' exhibit No. 6) was fabricated by Mr. Lindbom. The defendants ' conscious disregard for the stay of §362(a)l of the Bankruptcy Code and their attempted deception before this court warrants punitive damages in the amount of Three Thousand and No/100 ($3,000.00) Dollars. Regarding the truth-in-lending violation, the defendants have conceded an award of damages in the amount of Two Hundred Twenty-Two and No/100 ($222.00) Dollars. Both °362(h) and the truth-in-lending act provide for an award of reasonable attorney's fees. Based upon the presentation of Mr. Klosinski attorney for the plaintiff debtor as to his time in this matter reasonable attorney's fees are awarded in the amount of One Thousand Four Hundred and No/100 ($1,400.00) Dollars.

It is therefore ORDERED that judgment is entered for the plaintiff James Roy Burnett against the defendants Danz Carz, Inc. and Daniel R. Lindbom jointly and severally, in the amount of One Thousand Two Hundred Fifty and No/100 ($1,250.00) Dollars plus Three Thousand and No/100 ($3,000.00) Dollars punitive damages and reasonable attorney's fees in the amount of One Thousand Four Hundred and No/100 ($1,400.00) Dollars. Additionally, judgment is entered for the plaintiff James Roy Burnett against defendant Daniel R. Lindbom as to the truth-in-lending violation in the amount of Two Hundred Twenty Two and No/100 ($222.00) Dollars. The

judgment shall accrue interest as provided by law.

Regarding debtor's objection to the claim of Daniel R. Lindbom, the objection is sustained as to the status and the amount of the claim. Having determined that Mr. Lindbom does not hold a security interest in the debtor's 1984 Chevrolet Chevette automobile, the claim is wholly unsecured. As to the amount of the claim, the debtor has produced evidence (plaintiff's exhibit No. 5) of a Twenty and No/100 ($20.00) Dollar payment toward the engine repair bill of Seven Hundred Seventeen and No/100 ($717.00) Dollars reducing this portion of the claim to Six Hundred Ninety-Seven and No/100 ($697.00) Dollars. Additionally, the payment card (plaintiff's exhibit No. 6) reflects the gross balance due following the last payment on August 1, 1991 as Seven Hundred Twenty-Three and No/100 ($723.00) Dollars. This balance includes unearned interest. As the claim is wholly unsecured, Mr. Lindbom is not entitled to interest on his claim. It is therefore ORDERED that the creditor Daniel R. Lindbom recalculate the amount due under his proof of claim to reflect a pro rata payoff as of the date of filing, August 30, 1991, and file an amended proof of claim reflecting the pro rata payoff due under the transaction document, plus Six Hundred Ninety-Seven and No/100 ($697.00) Dollars for the engine repair bill, within fifteen (15) days of

the date of this order or the claim is barred in its entirety. In addition to filing an amended claim, the creditor shall serve a copy of the amended claim upon debtor and debtor's attorney in this adversary proceeding, Mr. Scott J.

Klosinksi, Attorney at Law, 3527 Walton Way, Suite At Augusta, Georgia 30909, and upon debtor's counsel in the underlying Chapter 13 case, Mr. John P. Wills, P. O. Box 1150, Thomson, Georgia 30824. As the holder of a wholly unsecured claim, defendant Lindbom is ORDERED and DIRECTED to deliver title to the debtor's automobile to the debtor with release of all liens within fifteen (15) days of the date of this order. The Chapter 13 trustee is ORDERED and DIRECTED disbursements on the amended claim until satisfaction of the judgment entered in this adversary proceeding.

_____
JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 3rd day of February, 1992.